

From: Legal Mind [legalmind@mind.org.uk]
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To: Keith Dawson
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Legal Mind
Issue 1 (Dec 2007/Jan 2008)

Welcome to the first issue of Mind's new enewsletter Legal Mind. As some of you may know, Mind previously produced a newsletter for which members of the legal profession paid a subscription fee. A decision was made to replace that with a shorter email bulletin, available free of charge and to a broader range of subscribers.

Our aim is to circulate Legal Mind at least every two months and since it is now several months since the final legal newsletter was produced, we have used the first issue of Legal Mind to bring readers up to date with developments stretching as far back as the Spring. Future issues will be shorter and contain fewer cases but will, it is hoped, be no less interesting and informative. It would be good to hear any comments you have about the first issue - the style, content, or anything else. It is only constant feedback that will help us to produce a newsletter that appeals to subscribers from such a wide variety of backgrounds.

Issue 2 of Legal Mind will be circulated towards the beginning of February so all that remains is for me to wish you an enjoyable and relaxing festive season and a peaceful 2008.

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News

Mental Health Act 2007 update

1. Bill becomes Act

The Mental Health Bill finally became the Mental Health Act 2007 (MHA 2007) in July. The full text of the new Act can be viewed on the website of the Office of Public Sector Information (OPSI) at www.opsi.gov.uk/acts/acts2007/20070012.htm

There are six main areas of the Mental Health Act 1983 (MHA 1983) that will be affected when all of the amendments made by the MHA 2007 come into force:

- there will be a new broad definition of mental disorder and the removal of most exclusions from the coverage of the MHA 1983
- the 'treatability test' will be replaced by an 'appropriate treatment test', the new test applying to all the long-term powers of detention
- supervised community treatment will be created through the introduction of a new Community Treatment Order for certain patients
- new safeguards will be introduced, including a provision for advocacy and amendments to the nearest relative displacement provisions
- the roles of approved social worker and responsible medical officer will be replaced by new roles which will be open to a wider range of professionals
- provision will be made for powers to reduce the time limits for the automatic referral of some patients to tribunals.

Mind's Legal Unit has produced a number of legal briefings about the new provisions, available on Mind's website at www.mind.org.uk/Information. Other publications that may be of interest are the Mental Health Alliance's Final Report examining the MHA 2007 and its likely impact is available (at www.mentalhealthalliance.org.uk) and Issue 17 of the Mental Health Act Commission's Policy Briefing for Commissioners, produced immediately prior to the Bill receiving Royal Assent and available at www.mhac.org.uk/files/POLICY%20BRIEFING%20issue%2017%20July%202007%20_2_.pdf

2. Provisions for early implementation

Several provisions amending the MHA 1983 (and the Mental Capacity Act 2005) were brought into force on 1 October 2007 by the Mental Health Act 2007 (Commencement No. 3) Order 2007. These include the amendment to section 127 increasing the maximum penalty for ill-treatment or neglect of patients from 2 to 5 years and the amendment to section 41 MHA 1983 requiring all future restriction orders made by the higher courts to be made without limit of time. On 1 December 2007, the provisions amending sections 26 and 27 MHA 1983 came into force providing for civil partners to be patients' nearest relatives for the purposes of the Act and giving them equal status with spouses. The provision relating to consent for young people aged 16 or 17

purposes of the Act and giving them equal status with spouses. The provision relating to consent for young people aged 16 or 17 (in section 43 MHA 2007) comes into force on 1 January 2008. This amends section 131 MHA 1983 so that 16 and 17 year olds who have not consented to informal admission will no longer be able to be admitted where a person with parental responsibility has given consent. Neither will a person with parental responsibility be able to prevent admission where a person aged 16 or 17 and with capacity to make the decision, consents to being admitted to hospital as an informal patient in accordance with section 131. For more information about the changes see the Department of Health (DH) website at www.dh.gov.uk/en/Publicationsandstatistics/Bulletins/theweek/DH_078749 The commencement order is available on the OPSI website at www.opsi.gov.uk/SI/si2007/20072798.htm

3. Consultations - Code of Practice and Secondary Legislation

At the end of October, the government publicised a draft revised Code of Practice for the Mental Health Act 1983 in England. Along with publication of a number of other documents this marked the beginning of a consultation on the code that will run until 24 January 2008. The documents can be downloaded from the DH website at www.dh.gov.uk/en/Consultations/Liveconsultations/DH_079842 At the same time, a consultation was launched on a variety of draft secondary legislation including the Mental Health (Hospital, Guardianship and Treatment) Regulations 2008 which effectively update the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 and include regulations relating to supervised community treatment. A similar exercise is being undertaken by the Welsh Assembly Government on equivalent draft secondary legislation and the Code of Practice for Wales. This closes on 28 January 2008 - <http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/1797596/?lang=en> The Care Services Improvement Partnership (CSIP) is organising stakeholder events to support the consultation on the draft code of practice for England during December and January in different parts of the country. Details of the dates, locations and regional contacts are on page 3 of the bulletin at this link <http://www.mhact.csip.org.uk/silo/files/update4.pdf>

Mental Capacity Act 2005 update

1. Implementation

Most of the provisions of the Mental Capacity Act 2005 (MCA) came into force on 1 October 2007. The Department of Health (DH) published Guidance on the Act's implementation for directors of adult social services and chief executives of NHS trusts, available at <http://snipurl.com/1ubvu> Mind's Legal Unit has produced a legal briefing that provides an overview of the MCA and others that focus on specific provisions. These are available on Mind's website at www.mind.org.uk/Information

With full implementation came the new Court of Protection and replacement of the Public Guardianship Office with the new Office of the Public Guardian (OPG). The OPG is an agency of the Ministry of Justice that will now handle all queries relating to the MCA and its operation. The OPG website, www.publicguardian.gov.uk contains useful information about the MCA. Finally, the Independent Mental Capacity Advocacy (IMCA) service, already operational in England, became operational in Wales on 1 October 2007.

2. Deprivation of liberty safeguards

The Mental Health Act 2007 primarily amends the Mental Health Act 1983 but is also being used to amend the MCA by introducing into that Act 'deprivation of liberty safeguards', previously referred to as 'Bournewood safeguards'. At the beginning of September, the Ministry of Justice (MOJ) and the Department of Health (DH) produced a paper encompassing two separate consultations on the safeguards. The first, led by the MOJ, concerns the Code of Practice guidance relating to the safeguards. The other is on the use of regulation-making powers included in the safeguards legislation and is led by the DH. To complicate matters further, the consultation on the Code covers both England and Wales whereas that on the use of regulation-making powers covers England only. The MOJ/DH consultation is about to close (on 2 December 2007). For more details visit the website of the MOJ at www.justice.gov.uk/publications/cp2307.htm

Welsh Ministers are holding a separate consultation on the use of the regulation-making powers in Wales. This closes on 28 January 2008 - <http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/1797596/?lang=en>

3. Law Society practice note on LPAs

The Law Society has produced a practice note to assist solicitors in advising clients wishing to draw up a Lasting Power of Attorney (LPA) as well as solicitors who are acting as an attorney under an LPA. The note also covers ongoing arrangements for EPAs. See www.lawsociety.org.uk/productsandservices/practicenotes/lpa.page

Smoking

Provisions under Part 1 of the Health Act 2006 introducing the 'smoking ban' and already in force in Wales, have now been in force in England for over four months. There is inconsistency between the Regulations covering Wales and England. In Wales, there is provision for designated smoking rooms to be made available for inpatients but in England there is only exemption for one year. For more information see Mind's legal briefing entitled The smoking ban: Part 1 of the Health Act 2006 at www.mind.org.uk/Information. In the run up to the ban in England, Mind published a new factsheet entitled Smoking, giving up and mental health, available at www.mind.org.uk/Information/Factsheets/Smoking+giving+up+and+mental+health.htm

Prior to implementation of the legislation in England, a patient at Rampton high security hospital issued proceedings in which he is challenging the hospital's smoking policy. Terrence Grimwood is arguing that the refusal to permit cigarettes in the hospital's buildings or grounds breaches the European Convention on Human Rights and specifically article 8 which provides that a person's private and family life should not be interfered with unless this interference can be justified. He claims that since some people will be in Rampton for the rest of their lives and the average stay is seven or eight years, the hospital is the patients' home. Mr

be in Rampton for the rest of their lives and the average stay is seven or eight years, the hospital is the patients' home. Mr Grimwood is also challenging the legality of the Regulations, saying they discriminate against detained psychiatric patients.

Administrative Justice and Tribunals Council

Back in February, the findings of a Stakeholder Satisfaction Survey conducted for the Mental Health Review Tribunal (MHRT) in England were published. In the light of findings highlighting a decline in overall satisfaction from an already unsatisfactory level, the Council on Tribunals held a Round Table Discussion on MHRTs during the summer. Representatives from key stakeholder groups - including Keith Dawson from Mind's Legal Unit - heard senior managers from the Tribunals Service acknowledged concern about the MHRT's administrative failings and set out the Tribunals Service's long-term programme of improvements. This includes relocating the MHRT secretariat to Leicester by March 2008 to improve staff recruitment and retention rates and introducing experienced managers from other well performing tribunals into the management team.

At the beginning of November, the Council of Tribunals was replaced by the Administrative Justice and Tribunals Council (AJTC), set up under the Tribunals, Courts and Enforcement Act 2007. The AJTC will play an important role in overseeing tribunals. For more information visit www.ajtc.gov.uk.

Equality and Human Rights

The Equality and Human Rights Commission (EHRC) came into being on 1 October 2007, taking over the functions of the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. The EHRC also has responsibility for tackling discrimination on the grounds of sexual orientation, religion or belief, and age, as well as promoting human rights. The EHRC's new website (www.equalityhumanrights.com) contains useful sections entitled 'Your rights' and 'For businesses and organisations'. Of particular interest is the section of the site covering the specifics of statutory equality duties and the implications of the Human Rights Act 1998 for all public sector organisations - at <http://snipurl.com/1ubvw>

If you have not already done, you may wish to have a look at Human Rights in Healthcare - A Framework for Local Action. This was published back in March 2007 by the Department of Health and developed in conjunction with the British Institute of Human Rights and five NHS Trusts. The framework sets out how NHS Trusts can develop their own human rights based approaches and will, it is hoped, assist them to put human rights into action in the daily planning and delivery of health services. The framework can be downloaded at: www.bih.org/downloads/Health_framework.pdf

Government review of discrimination law

During the so called summer, the Government consulted on a Green Paper reviewing current discrimination law, following the Discrimination Law Review launched in 2005. A key aspect of the proposals is the replacement of the different Disability Discrimination Act definitions of 'discrimination' - as they relate to goods, facilities and services, premises, public authorities and private clubs - with a single definition of discrimination

Healthcare Commission publications

Is anyone listening? A report on complaints handling in the NHS, was published by the Healthcare Commission in October. The report, which says there is little evidence that trusts are systematically learning from complaints to improve their services and highlights improvements that trusts can make, is available on commission's website at www.healthcarecommission.org.uk/_db/_documents/HC_Complaints_Handling_tagged.pdf

The results of the commission's annual survey of community mental health services in England were published at the beginning of September. The survey, carried out in spring 2007, indicated an improvement in services. Importantly, it suggested there has been an increase in the number of people with more complex mental health needs who know who their care co-ordinator is and are being offered copies of their care plan. But concerns remain such as more than one in three service users who want counselling saying they have not received it.. The survey results can be viewed on the Healthcare Commissions website at <http://snipurl.com/1ubvx>

National framework for long term NHS care

A National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care was implemented in England on 1 October 2007 with the aim of standardising decisions on eligibility for continuing care. The Department of Health (DH) has produced a leaflet that aims to answer questions following the changes. There is also a Resource pack which aim is to help NHS Bodies and Local Authorities trainers to deliver a comprehensive training to their staff. For more details see the DH website at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079515 and www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_078894

Independent Safeguarding Authority appointments

Following the appointment in April of Sir Roger Singleton as Chair, Adrian McAllister has been appointed as Chief Executive of the Independent Safeguarding Authority (ISA), formerly referred to as the Independent Barring Board and created by the Safeguarding Vulnerable Groups Act 2006. Under a new 'vetting' scheme, scheduled to begin operation in autumn 2008, the ISA will make rulings as to whether or not individuals should be allowed to work or volunteer with children or vulnerable adults.

Moving people

Moving People has been set up following awards of £16 million from the Big Lottery Fund and £2 million from Comic Relief. Led by Mental Health Media, Mind, Rethink, and the Institute of Psychiatry, King's College London, the Moving People 'portfolio' comprises six national and 28 local projects. The national projects include an anti-stigma campaign to change public attitudes and a project, called Legal Mind, which will involve Mind's Legal Unit seeking out test cases and pursuing them in the courts. To keep up to date

with what's happening in Moving People visit www.movingpeople.org.uk

Confronting stigma at work

Shift, the Department of Health funded initiative to tackle stigma and discrimination in England, has published a handbook offering practical advice to managing and supporting people with mental health problems in the workplace. This is available on the Shift website at <http://shift.org.uk/~employers/five.html>

Another assault

As a result of its concern about people who experience mental distress not being adequately served by the criminal justice system, Mind recently conducted research in which the majority of respondents said they had experienced harassment, bullying, abuse or assault and that they generally felt more vulnerable in the community than the general population. People had been called names, spat at, pestered, followed in the street, sent hate mail or been the target of prank phone calls and many had had difficulties trying to get the police to take such harassment seriously. At the time of writing, campaign on these issues is scheduled to be launched on 29 November 2007 alongside Another assault, the report of the survey findings. You can find more information on Mind's website at www.mind.org.uk/News+policy+and+campaigns/Campaigns/accesstojustice.htm

Care Quality Commission

The Government has finally published its response to the consultation 'The future regulation of health and adult social care in England' that ended last February. The response reaffirms the intention of creating a new regulator that brings together the Healthcare Commission, the Commission for Social Care Inspection and the Mental Health Act Commission. The Care Quality Commission will regulate health and adult social care services and its powers will be included in the new Health and Social Care Bill, due to be introduced in Parliament this year. The Government says: "We plan that the Care Quality Commission will be established in October 2008 and will take on responsibility for the regulation of health and adult social care in April 2009 ... the Healthcare Commission, the Commission for Social Care Inspection and the Mental Health Act Commission will continue to fulfil their current statutory functions until the end of March 2009". See www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_078227

Community Legal Advice

Community Legal Service Direct has changed its name to Community Legal Advice. The phone number remains 0845 3454345 but the new website is www.communitylegaladvice.org.uk

Cases

Cases are in date order with the most recent first. Ombudsmen decisions are listed after those of the courts. It will not always be possible to provide summaries of cases listed in Legal Mind. We are grateful to BAILII (British and Irish Legal Information Institute) for allowing us to link to full case reports.

R (Secretary of State for the Home Department) v Mental Health Review Tribunal, JC, and Tees Esk and Wear Valleys NHS Trust

[2007] EWHC 2224 (Admin)
Administrative Court (Sullivan J)
30 August 2007

The Home Secretary was challenging a Mental Health Review Tribunal (MHRT) decision made in December 2006. The MHRT had directed the deferred conditional discharge of JC, a condition being that he reside at a particular establishment and abide by its rules, which included not leaving the establishment unescorted. The decision depended on there being satisfactory trial leave or leaves, agreement from the Home Office and Multi-Agency Public Protection Arrangements (MAPPA), and the proposed responsible medical officer reporting on having met the patient and agreeing to accept him. The Home Secretary argued that the MHRT had no power to impose the escort condition since it amounted to a deprivation of JC's liberty. Further, that the decision was irrational since there was no evidence for the MHRT to conclude that the statutory criteria for conditional discharge could be fulfilled. Finally, that the trial leave and agreement conditions could not lawfully have been imposed.

The MHRT accepted that its decision had been unlawful and signed a consent order agreeing to the quashing of the decision. The decision was irrational since there had been no changes between the first decision to adjourn in June 2006 (it adjourned again in September) and the December hearing. As for the 'trial leave' and 'agreement' conditions, it was not lawful for an MHRT to impose conditions requiring agreement of other bodies in respect of conditional discharge. Since these grounds of challenge had succeeded, the court did not consider the deprivation of liberty issue.

Full report available at www.bailii.org/ew/cases/EWHC/Admin/2007/2224.html

Lewisham Borough Council v Courtney Malcolm and Disability Rights Commission

[2007] EWCA Civ 763
Court of Appeal (Arden LJ, Longmore LJ, Toulson LJ)
25 July 2007

Malcolm (M) successfully appealed against a possession order. He had been given a diagnosis of 'schizophrenia' but was said to be 'stabilised' by medication. M was a secure tenant of Lewisham (the council) and exercised the right to buy his flat but before completion, sublet it without the council's consent and therefore ceased to be a secure tenant by virtue of s.93 of the Housing Act 1985 (HA). On discovering the subletting the council gave notice to quit and an order for possession was eventually made. The

1985 (HA). On discovering the subletting, the council gave notice to quit and an order for possession was eventually made. The court held that M was not a disabled person under s.1 of the Disability Discrimination Act 1995 (DDA) and that the subletting had not been caused by any disability. The judge's view was that DDA provisions concerning eviction did not apply because M no longer had security of tenure and that there would be no discrimination unless the council knew of M's disability. In allowing M's appeal, the Court of Appeal held that:

1. Evidence indicated that M's mental health had a substantial effect on his ability to carry out normal day-to-day activities and he did fall within s.1 DDA;
2. The subletting was 'related' to the disability for the purposes of s.24(1)(a) DDA and by bringing possession proceedings, the council unlawfully discriminated against M
3. If obtaining the possession order would discriminate against a disabled person it would not be lawful to make the order because s.22(3) DDA provided that such discriminatory treatment was unlawful - there was no exception for the case where security of tenure had been lost under s.93 HA; and
4. S.24 HA did not require knowledge of the disability and lack of awareness was not a defence to a discrimination claim.

Full report available at www.bailii.org/ew/cases/EWCA/Civ/2007/763.html

R(JL) v Secretary of State for the Home Department

[2007] EWCA Civ 767

Court of Appeal (Waller LJ (V-P), Maurice Kay LJ, Wilson LJ)

25 July 2007

This was an unsuccessful appeal by the Home Secretary against a decision that there was an obligation to conduct a public enquiry into the attempted suicide of a prisoner (JL). Concerns had been expressed that JL might self-harm after he had been remanded in custody. Subsequently, he suffered serious permanent brain injury after being found with a sheet around his neck suspended from the bars of his cell window. A retired governor, asked by the Prison Service to investigate what had happened, reported that J had not at any time expressed any thoughts of self-harming. The court had held that there had been a breach of the obligation to conduct an investigation in compliance with article 2 of the European Convention on Human Rights (ECHR). On appeal, the Home Secretary submitted that the obligation to carry out an enhanced investigation arose from the possibility that the state might be in breach of its positive obligation to protect life and that there had to be an arguable breach before the duty to hold the investigation could arise.

The Court of Appeal held that a death or serious injury in custody gave rise to the obligation to carry out an enhanced investigation and the extent of that investigation would depend on the circumstances of the case. The state's accountability involved more than simply being accountable for a substantive breach; the accountability extended to explaining how the death in custody occurred. Where a state was accountable by virtue of a person being in custody, it was for the state to investigate the facts and explain how the death or near-death occurred, and it was not for the victim or the family to establish some arguable case before that investigation could take place. When there was a death or near-death in custody, the state had to commence an investigation by a person independent of those implicated in the facts and the nature of that investigation (including the level of involvement of the person and/or the next of kin) would depend on the circumstances. In the case of JL, the retired governor could not have had the degree of independence required.

Full report available at www.bailii.org/ew/cases/EWCA/Civ/2007/767.html

E McDougall v Richmond Adult Community College (2007)

Appeal No. UKEAT/0589/06/DM

Employment Appeal Tribunal (Judge McMullen QC, D Jenkins, JM Matthias)

13 July 2007

Ms McDougall (M) successfully appealed against an employment tribunal (ET) decision to dismiss a claim that she had been discriminated against on the grounds of disability. M had a history of experiencing mental distress and had, three years before being offered a job by the college, been compulsorily detained under the Mental Health Act 1983 (MHA). Following an occupational health report, the college withdrew its job offer and between the withdrawal and the ET hearing, M was readmitted to hospital. The claim for disability discrimination was based on M having a persistent delusional disorder that brought her within the definition of disabled person in s.1 of the Disability Discrimination Act 1995 (DDA). The ET had ruled that M did not fall within the definition - she had a mental impairment but this did not have a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. The ET also found that there was no evidence at the time the job offer was withdrawn that M's condition was likely to recur.

M submitted to the EAT that compulsory detention under the MHA was conclusive evidence of substantial adverse effect for the purposes of the DDA and was in itself a restriction that had a substantial adverse effect on a person's ability to carry out day-to-day activities. Alternatively, she argued, the effect of her impairment was long-term and the tribunal had failed to take account of her relapse. It was held that satisfaction of the conditions for compulsory detention under the MHA was not necessarily satisfaction of the definition of disability in the DDA and that mental disorders falling within the MHA did not necessarily meet the conditions in the DDA. However, M was disabled under the DDA; paranoid delusions impaired her ability to understand and the impairment was substantial and adverse enough for M to be compulsorily detained. Although not required to decide the second issue, the EAT said being detained necessarily involved a restriction on M's day-to-day activities and it was unlikely that a detained person could carry out her day-to-day activities. The EAT also held that the ET should have considered M's relapse when considering whether her condition was likely to recur, even though it had occurred after the withdrawal of the job offer. Likely recurrence was a feature of M's condition as at the date of the job offer withdrawal.

M's condition as at the date of the job offer withdrawal.

Full judgment available at www.employmentappeals.gov.uk/public/search.aspx (search using EAT number: UKEAT/0589/06/DM)

R(MM) v Secretary of State for the Home Department

[2007] EWCA Civ 687

Court of Appeal (Keene LJ, Gage LJ and Toulson LJ)

6 July 2007

MM was unsuccessful in this appeal against a decision in November 2006 dismissing his claim for judicial review. It concerned the legal test that the Home Secretary must apply when recalling a conditionally discharged patient under section 42 of the Mental Health Act 1983. After being admitted to hospital in the mid 1990s under section 37 with a restriction order under section 41, MM had been conditionally discharged and subsequently recalled by the Home Secretary on several occasions. MM's application for judicial review had concerned two particular decisions to recall him, in March 2006 and September 2006. Conditions imposed on MM whenever he was discharged included refraining from illicit drug use and submitting to random drug testing. The March recall followed an admission by MM that he was using cannabis, concerns about his behaviour and a subsequent refusal to take a drug test. The September recall was ordered after MM failed a drugs tests. On each occasion, MM's responsible medical officer effectively reported that there was no evidence indicating that MM's mental health had deteriorated. MM argued that for recall to be lawful in these circumstances, there had to be medical evidence showing that the person "either is now in a mental state such that it is necessary to readmit him or that he will, if he takes drugs, inevitably suffer a deterioration such that he will be in that condition in the imminent future." Mitting J had rejected this submission as too stringent and the Court of Appeal agreed. Toulson LJ said that "Taken to its logical conclusion, the submission would mean that if a doctor were to advise the [Mental Health Unit in the Home Office] that in his view there was a serious risk that a patient, who suffered from mental illness and was taking illicit drugs, could at any moment become homicidal, but that there was no certainty of this happening and were no immediate symptoms of psychosis, the patient could not be recalled. This would not make sense." He went on to say that "an obvious part" of the purpose of mental health treatment is the avoidance or minimisation of risk and that he could see no reason in law why a person in MM's position had to be exhibiting 'psychotic symptoms' or certain to be on the point of recurring in order to be detained again.

Full report available at www.bailii.org/ew/cases/EWCA/Civ/2007/687.html

YL (by her litigation friend the Official Solicitor) (FC) v Birmingham City Council and others

[2007] UKHL 27

House of Lords (Lord Bingham of Cornhill, Lord Scott of Foscote, Baroness Hale of Richmond, Lord Mance, Lord Neuberger of Abbotsbury)

20 June 2007

Following a Court of Appeal decision in January, the House of Lords has held that a private care home is not exercising a public function when it looks after people referred and funded by the local authority. The case concerned an 84 year old woman (YL) diagnosed with Alzheimer's Disease who was threatened with eviction from a private care home following problems between the home and members of YL's family. Her lawyers argued that the threatened eviction would breach YL's right, under article 8 of the European Convention on Human Rights, to a private and family life. The House of Lords was concerned with the preliminary issue of whether the private home was a public authority for the purposes of the Human Rights Act 1998 so that the owners have to act compatibly with the rights protected by that Act. The Lords decided that it was not by a majority of 3:2 and charities immediately urged the government to change the law to give private care home residents the same rights as those in local authority homes. The government, which backed Mrs YL's case, said it was considering the implications.

Full report available at www.bailii.org/uk/cases/UKHL/2007/27.html

R (RD) v Mental Health Review Tribunal and Secretary of State for the Home Department

[2007] EWHC 781 (Admin)

Administrative Court (Mumby J)

4 April 2007

This was a renewed application for permission to apply for judicial review of the MHRT's decision not to order discharge in March 2006. Permission had been refused on the papers at the end of August 2006. It was made by RD, a restricted patient (in Broadmoor) and concerned his rights under article 5(4) of the European Convention on Human Rights to a review of his detention and the adequacy of the reasons for the decision not to discharge. The article 5 issue centred on the role of the medical member of the MHRT and the requirement of Rule 11 of the Mental Health Review Tribunal Rules 1983 (SI No 942) requiring the medical member to take steps to form an opinion of the patient's mental condition. RD complained that the medical member had gone "far" beyond this by forming an opinion as to whether he should continue to be detained and communicating this to the other Tribunal members before the hearing. His right under article 5(4) to an independent and impartial judicial determination of the lawfulness of his detention had therefore been breached. The court did not agree. Nothing in rule 11 prevents the medical member from discussing all aspects of the case with the other Tribunal members before the hearing and sharing her preliminary view on the case as a whole or on any particular aspect of it. This view would be subject to evidence at the hearing. The second ground for challenging the decision was also dismissed. The MHRT had given "adequate and intelligible reasons which sufficiently identified and explained both its central findings of fact and its overall conclusions in relation to both section 72(1)(b)(i) and section 72(1)(b)(ii)"

(ii)"

Full report available at www.bailii.org/ew/cases/EWHC/Admin/2007/781.html

Sunderland City Council v (1) PS (by her litigation friend the Official Solicitor) (2) CA

[2007] EWHC 623 (Fam)
Family Division (Munby J)
9 March 2007

This case concerned an older woman (PS) who was ready for discharge following a relatively short admission to hospital. A care home was identified as the place most suitable for meeting her needs but PS lacked mental capacity to decide whether to move back to the care home and her daughter (CA) decided PS should live with her on discharge. The local authority made an application to the High Court for an order placing PS in the home and, because it was concerned that CA might try to remove her, sought an order permitting it to deprive PS of her liberty by (if need be) stopping her from leaving the home. The case is of interest not only because it confirmed that people lacking the requisite capacity can be deprived of their liberty pending implementation of the insertion of the Deprivation of Liberty Safeguards into the Mental Capacity Act 2005. Also, because Mr Justice Munby set out his view of the minimum requirements if the inherent jurisdiction of the court is to be invoked to justify detention in such circumstances.

Full report available at www.bailii.org/ew/cases/EWHC/Fam/2007/623.html

Local Government Ombudsman decisions: North Yorkshire County Council 05/C/13158

This decision is of interest in as much as it appears to endorse North Yorkshire County Council's acceptance (albeit a delayed acceptance) of a service user's right to top up her care home fees, where she was entitled to aftercare under section 117 of the Mental Health Act 1983. There is no specific statutory provision, case law or guidance on whether someone owed a duty under section 117 can make up the difference where they wish to live in a home that charges more than the council would be charged by another home that was able to meet the person's aftercare needs.

The facts were, in essence, that Mrs Trent (not her real name) was initially told by the council that only a third party could meet the additional costs of her preferred home. However, the council reviewed the decision and then said it would be reasonable for the mother to meet the difference in costs herself. The Ombudsman's decision was that there was maladministration causing injustice and that the Council should pay Mrs Trent's daughter £500. It had caused unnecessary distress to the daughter by failing to consider whether its choice of care home for Mrs Trent would meet her need for frequent family contact, a key part of her assessment, and through the delay in its decision about who could pay the additional costs. The case can be found on the LGO's website at www.lgo.org.uk/socserv.htm#Adult%20care%20services

Notice board

Mind courses

Mind's training and conference programme for 2007 has been completed. Details of the 2008 programme will be included in this newsletter as soon as it is finalised, as will details of Mind's annual conference 2008

Legal flow-chart posters

Earlier this year, Mind published two legal posters, designed to help those working within the legal system explain legal scenarios to clients with mental health problems. One covers mental health review tribunals, and the other consent to treatment. Each poster is A2 sized (4 x A4), landscape.

You can order them online at: www.mind.org.uk/osb/showitem.cfm/Category/168 or from Mind Publications, telephone: 0844 448 4448, email: publications@mind.org.uk

Get a £5 discount if you subscribe to Openmind magazine online in November

If you don't yet subscribe to Openmind, Mind's thought-provoking bimonthly mental health magazine, why not explore the sample articles - one from each of the past forty-four issues - that are available online at

www.mind.org.uk/Shopping/Openmind/OMfeatures.htm

For example, you can find out why regular contributor Rachel Perkins is drawing similarities between Prince Charles and a psychiatric patient in this month's issue: www.mind.org.uk/Shopping/Openmind/Extract+from+148.htm

Discover why Mind has been recommending green exercise as a treatment option: www.mind.org.uk/Shopping/Openmind/Extracts/extract145.htm

To make sure you don't miss articles like these, set up a subscription at the special discounted rate this month at:

www.mind.org.uk/omebulletins/e2.html

If you have any queries about Openmind or subscribing please don't hesitate to contact Johnny Bird - telephone: 020 8215 2301 or email: j.bird@mind.org.uk

Advice services from Liberty

Advice services from Liberty

Liberty (also known as The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. It works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and the provision of free advice. Liberty run three advice services to help people to better understand the Human Rights Act 1998 and its implications. They are:

- Advice and information to members of the public - call 0845 123 2307;
- Advice and information for voluntary and community groups to help them advise their service users - call 0845 122 8621; and
- Specialist support service for lawyers and advisers with LSC contracts - call 0808 808 4546.

Queries can also be submitted online at Liberty's legal information website at www.yourrights.org.uk This website provides legal information on a range of civil liberties and human rights issues. If you wish to find out more about Liberty, visit www.liberty-human-rights.org.uk

About Legal Mind

Legal Mind is an e-newsletter providing information about developments in mental health law and policy. Legal Mind is produced by Mind's Legal Unit, a small team of lawyers providing advice on mental health and related law to people experiencing mental distress, families, carers, advocates and other professionals. It is available free of charge but is only circulated to people who wish to receive it. Anyone wishing to subscribe can do so at

www.mind.org.uk/Information/Legal/legalmindsubs

Legal Mind is produced mainly for people involved in the delivery of mental health services, mental health advocates and lawyers. Anyone can subscribe but please remember that Legal Mind is no substitute for a statement of the law or for legal advice.

Mind's Legal Unit can be contacted in writing (to "The Legal Unit" at the address above), by e-mail (legal@mind.org.uk) or by telephoning our Legal Advice Line. The line is open on Monday, Wednesday and Friday afternoons between 2.00 and 4.30 p.m. and can be accessed by phoning the Mind switchboard and asking for "Legal Advice".

TO UNSUBSCRIBE: please email legalmind@mind.org.uk with the word UNSUBSCRIBE in the subject line.

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